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19 STARBUCKS CORPORATION

20 UNITED STATES DISTRICT COURT

21 FOR THE DISTRICT OF ARIZONA

22 Cornele A. Overstreet, Regional Director of the
Twenty-Eighth Region of the National Labor
23 Relations Board, for and on behalf of the
National Labor Relations Board,

24 Petitioner,

25 v.

26 Starbucks Corporation,

27 Respondent.
28

Case No. 2:22-cv-00676-JJT

**RESPONDENT'S MEMORANDUM
AND POINTS OF LAW ON
DISCOVERY**

1 The Respondent in a 10(j) petition is entitled to conduct discovery against the
2 government, including by deposing the petitioning Regional Director (“RD”). *Fusco v. Richard*
3 *W. Kaase Baking Co.*, 205 F.Supp. 459 (N.D. Ohio 1962) (ordering deposition of RD). Denying
4 discovery is against “the true interests of justice” and inconsistent with the Federal Rules of Civil
5 Procedure. *Id.* “When the government brings an action in the exercise of its regulatory powers it
6 is subject to discovery, as would be a private litigant.” *Id.* Any interest the RD may have in the
7 confidentiality of its investigations is adequately protected by tailoring deposition to the 10(j)
8 issues. *Id.* at 464.

10 In *Kinney v. Chicago Tribune Co.*, 1989 WL 91844 (N.D. Illinois), the court ordered the
11 deposition of RD on “the facts upon which it relied and its decision to file the petition.” Likewise
12 in *Modern Drop Forge Co.* 108 F.3d 1379, *1 (7th Cir., 1997), the court rejected the RD’s claim
13 of “decisional process privilege” and ordered deposition. *See also, Lineback v. Coupled Prod.,*
14 *LLC*, 2012 WL 1867615 (N.D. Indiana) (ordering deposition of knowledgeable Board officer).

16 Objections based on privilege must be made to specific questions. In *Forge Co.* the
17 Seventh Circuit explained that a court must consider claims of privilege as to “specific challenges
18 [to] questions, as opposed to merely *kinds* of questions” and endorsed the approach of the district
19 judge in *Kinney* who, following deposition of the RD, considered 45 challenged questions “one
20 by one.” A determination as to the Region’s claim of privilege must be made by “looking at each
21 question posed in a deposition, one by one, and then determining specifically, one by one, line by
22 line, which questions” the RD can answer. *Coupled Prod.* at *2. Respondent seeks only to inquire
23 as to the allegations in the 10(j) petition and —all topics approved for discovery in the foregoing
24 cases. To the extent that objections might be made to certain questions on the grounds that they
25 seek to elicit privileged information, the Regional Director may object to those questions during
26 the deposition and the court may decide the matter.
27
28

1 Dated: May 5, 2022
2
3

4 /s/ R. Shawn Oller

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16 I hereby certify that I electronically
17 transmitted the attached document to
18 the Clerk's Office using the CM/ECF
19 System for filing and transmittal of a
20 Notice of Electronic Filing to the
21 following CM/ECF registrants, and
22 emailed a copy of same to the
23 following if non-registrants, this 5th
24 day of May, 2022, to:

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/s/Yvonne Feher